(ii) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such mistake; but if the debtor does not give such notice he shall be deemed to have complied with the bankruptcy notice, if within the time allowed he takes such steps as would have constituted compliance with the notice had the actual amount due been correctly specified therein."

The proviso was introduced in England by section 16 of the 1913 Act so that where such notice as is referred to is given, the position in law is the same as in England before 1913, and as in Singapore which has not a similar proviso. Conversely, where no such notice is given, then any English decision prior to 1913 is not applicable. The law would then be as in Singapore and as in England after 1913.

On the authorities, it seems to me reasonably clear that where an excess is claimed in the bankruptcy notice and no such notice of dispute of the validity of the notice by reason of such excess is given, then the bankruptcy notice is not invalid, merely by reason of the excess.

Where the amount claimed in the bankruptcy notice is in excess and notice, as is referred to in the proviso to section 3(2) of the Ordinance, is given within 7 days after the service of the bankruptcy notice, then the excess becomes relevant and on the authorities the bankruptcy notice is invalid, since it referred to a sum in respect of which the judgment-creditor could not have issued execution: *In re Child; Ex parte Child.*[1]

In this case, I have to decide whether the letter dated the 31st July, 1967, was such a notice as is required to be given to dispute the validity of the bankruptcy notice. Not unnaturally, two opposing submissions were urged upon me, but while a considerable number of authorities was referred to on the law on the matter, no single reference was made to any decision on what are, if any, the requirements of such a notice.

It is true that the letter could have been more happily or more accurately worded. But, read as a whole, what it says is that the judgment-debtor denies owing the judgment-creditor the sum claimed in the notice. The absence of the words "or at all" seems to be significant. By reason of such absence, the judgment-debtor does not, in my view, deny the existence of any debt to the judgment-creditor. What he does deny is the debt of $4,344.64 cents as claimed in the notice, but it seems to me he does not and cannot be taken to deny the existence of a debt for a smaller amount. If any doubt exists on this point, his next sentence that he disputes the validity of the bankruptcy notice would make it clear that he does not say he could not be adjudicated a bankrupt on a proper notice on the facts as existing then between the parties, but what he says is that he could not and should not be made the subject of any receiving or adjudicating orders on that particular notice. In my view, the said letter is a notice to the judgment-creditor that the debtor disputes the validity of the bankruptcy notice on the ground of a mistake in the sum claimed as actually due.

I accordingly hold that the said letter dated the 31st July, 1967, was a sufficient notice to comply with the proviso to section 3(2) of the Bankruptcy Ordinance, and that it was served within time. The bankruptcy notice is, therefore, bad and is set aside. There will be an order for costs to be paid by the judgment-creditor.

Bankruptcy notice set aside.

Solicitors: *N. Sharma; Dharmananda & Co.*

SUNDARAM v. CHEW CHOO KHOON

[O.C.J. (Chang Min Tat J.) October 23, 1967]

[Ipoh — Civil Suit No. 232 of 1967]

Land Laws — Chargee making foreclosure application under s. 260 of the National Land Code, 1965 — Chargor seeking declaration that charge void — Chargor applying to court under s. 447 of the National Land Code by summons in chambers — Whether application proper — Remedy of chargor in such cases — National Land Code, 1965, ss. 28(2), 260 & 447.

The plaintiff had executed three charges in favour of the defendant over his land which the defendant sought to enforce by sale under section 260 of the National Land Code in a foreclosure application before the Collector of Land Revenue. The foreclosure application was adjourned by the collector so that the plaintiff could in the meantime apply to the High Court under section 447 of the Code. The plaintiff then sued for a declaration that the charges executed by him in favour of the defendant were void and unenforceable. The plaintiff then sought the postponement of the foreclosure proceedings before the collector by first applying by registered letter under section 28(2) of the Code and secondly by applying by way of summons in chambers under section 447 of the Code for stay of the collector's enquiry till his claim in the High Court was determined. When the summons in chambers came up for hearing objection was taken by counsel for the defendant as to the form of the application. It was submitted by the defendant that the application should have been by way of originating summons and that if section 447 of the Code applied, the reference therein to a summons in chambers was plainly wrong as any application not in a pending cause or matter must by the Rules of the Supreme Court be made in an originating summons.

Held: (1) section 447(1) of the Code provides in the event of inconsistency for the prevalence of any rules of court over any provision of the Code so that unless it is a pending cause or matter any application to the court must be by way of originating summons in accordance with the Rules of the Supreme Court;

(2) section 447(2) refers to proceedings in the High Court under the Code and directs that in "proceedings so taken" any party thereto may apply for procedural directions in a matter not provided for. The civil action could not be said to be a proceeding under the Code and an application for stay of the collector's enquiry is not an application for procedural directions and cannot be made under this particular section.

Case referred to:—

(1) *Bull & Ors.* v. *Attorney-General for New South Wales* [1916] 2 A.C. 564.

CIVIL SUIT.

N. Sharma for the plaintiff.

S. N. Leow for the defendant.

Cur. Adv. Vult.

Chang Min Tat J.: In Civil Suit No. 232 of 1967 instituted on 12th May, 1967, the plaintiff sued for (i) a declaratory order that 3 charges executed by the plaintiff in favour of the defendant over a certain piece of land were void and unenforceable as against the plaintiff, the defendant being an unlicensed moneylender, (ii) an order for the return of the issue document of title, and (iii) an order that the Collector of Land Revenue, Kuala Kangsar, cancel the entries of such charges in the land register.

Prior to the institution of the action in the High Court, the defendant had applied, in Foreclosure Application No. 5 of 1966, to the Collector of Land Revenue, Kuala Kangsar, under section 260 of the National Land Code for sale of the land. The application came up for hearing on the 5th June, 1967, on which date the hearing was adjourned to the 20th June, 1967, it being suggested to the plaintiff that he should, in the meantime, apply to the High Court under section 447 of the National Land Code.

Acting on this suggestion, the plaintiff by his solicitor on the 8th June, 1967, took 2 courses. In the first place, he applied by registered letter under section 28(2) of the National Land Code for a postponement of the hearing of the enquiry into the application for sale to a date to be fixed after the determination of the civil action in the High Court. Secondly, on the same day and acting on the suggestion of the Collector of Land Revenue, Kuala Kangsar, he filed an application in the action by way of a summons-in-chambers for an order that all proceedings in the defendant's application before the Collector of Land Revenue, Kuala Kangsar, be stayed until further order.

When the summons-in-chambers came up before me, objection was taken by counsel for the defendant to the form of the application. It was submitted that the application should have been by way of an originating summons, and that if section 447 of the National Land Code applied, the reference therein to a summons-in-chambers was plainly wrong as any application not in a pending cause or matter must, by the Rules of the Supreme Court, be made in an originating summons.

That submission is, in my view, correct but only partly correct.

Section 447(1), which reads as follows:—

"447. (1) Nothing in this Act shall affect the operation of any rules of court; and, if any provision of this Act is inconsistent with any provision of any rules of court, the latter provision shall prevail and the former provision shall, to the extent of the inconsistency, be void"

provides, in the event of inconsistency, for the prevalence of any rules of court over any provision in the National Land Code, so that unless it is a pending cause or matter, any application to the High Court must be by way of originating summons in accordance with the Rules of the Supreme Court.

As to sub-section (2) of section 447, which reads as follows:—

"(2) A person or body seeking to take proceedings in the court under this Act, and any party to the proceedings so taken, may apply to the court by summons in chambers for procedural directions in respect of any matter not provided for; and the court on any such application may make such order as it considers appropriate"

it refers to proceedings in the High Court under the Act, and directs that in "proceedings so taken", any party thereto may apply for procedural directions in a matter not provided for. In my view, the civil action cannot be said to be proceedings under the Act, and an application for stay of the Collector of Land Revenue's enquiry is not an application for procedural direction and cannot be made under this particular section. Nor is it in respect of any matter not provided for.

In the matter of stay of the Collector of Land Revenue's enquiry in a chargee s application for sale, there is the provision in section 37 of the National Land Code for appeal to the court from any decision or order given in the enquiry. What the decision of the Collector of Land Revenue, Kuala Kangsar, to the application by registered letter on the 8th June, 1967, was, I was not advised, but clearly it is for him to rule under section 28(2) of the National Land Code on the application for an adjournment. If he rules against the plaintiff, the recourse of the plaintiff is by way of appeal, the duty of the plaintiff obviously being to exhaust all his remedies under the law before resorting to the inherent and superior jurisdiction of the High Court: *Bull & Ors.* v. *Attorney-General for New South Wales.*(1)

It may be that the advice of the Collector of Land Revenue, Kuala Kangsar, is unfortunate, but whatever his status may be, his construction is not binding on the court on whom the duty falls to construe the Ordinance.

I accordingly hold that the application is misconceived, and I dismiss it with costs.

Application dismissed.

Solicitors: *N. Sharma; S. N. Leow.*